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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the Norwegian Refugee Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Obstruction of Humanitarian Assistance under International Law

1. The Norwegian Refugee Council (NRC) submits the following statement for consideration by the United Nations (UN) Human Right Council (the 'Council') in relation to deliberations under Agenda Item 7. The statement focuses on Israel's legal and humanitarian obligations in accordance with international human rights law and humanitarian law – the precepts of which govern the provision of humanitarian assistance in occupied territory.

I. West Bank including East Jerusalem

2. The impediments to development imposed by Israel in Area C of the West Bank has resulted in significant hardships for Palestinians living there. In the period 1 January 2016 through 11 February 2016 alone, the Israeli Military Commander (IMC) destroyed 233 residential, water and sanitation and livelihood-related structures owned or inhabited by Palestinians, adversely affecting 1,400 persons. This represents a 230% increase in the destruction of property in relation to the monthly average in 2015. The marked increase denotes the extensive and wanton nature of destruction.

3. Of the structures destroyed or seized during this period, 104 were provided as internationally-funded humanitarian assistance representing a staggering 751% increase in the destruction of humanitarian assistance in relation to the monthly average in 2015. The share of humanitarian assistance being demolished has increased from 21% in 2015 to 45% in early 2016, indicative of the intentional targeting of humanitarian relief objects.

4. Currently, the IMC unlawfully obstructs the delivery of humanitarian assistance to the most vulnerable communities in Area C, based on: their location in strategic priority areas for Israeli settlement expansion; due to their proximity to the Wall; or because of closed military zones.[1] Further, in 2015, following a report by the settlement organization, Regavim, Israeli PM Netanyahu publicly ordered the military to demolish EU funded structures in Area C.[2]

5. In April 2015 the IMC issued an order[3] relating to the treatment of internationally-funded humanitarian assistance, which the IMC relates to as illegal construction. From the order it seems as though IMC is moving forward with formally and systemically protesting the provision of material assistance in Area C, and demanding international donors remove humanitarian objects, thus delaying or denying the provision of humanitarian relief consignments.

6. In January 2016 the Israeli PM restated publicly on at least two occasions that the Government of Israel considers humanitarian assistance provided by the European Union and its Member States to be in violation of domestic and international law. Statements to the same effect were made by the IMC during a hearing in the Israeli Knesset Judea and Samaria Subcommittee of the

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[1] See the Israeli Knesset Judea and Samaria Subcommittee of the Foreign Affairs and Defense Committee, meeting on the "*illegal Palestinian construction in Area C*", minutes from 27 April 2014. For international law analysis of these restrictions see Marco Sassoli & Theo Boutruche, Expert Opinion on the Current Attempts to Displace the Remaining Bedouin Communities from the Central West Bank to Nuweima under International Humanitarian Law (11 November 2014); Yuval Shani, David Kretzmer &Eyal Benvenisti, Experts Legal Opinion in relation with the Petition filed by Residents of Villages in Firing Zone 918 against the Intention to Transfer them from their Homes (16 January 2013).

[2] Channel 2 News, 6 February 2015.

[3] see: http://gisha.org/UserFiles/File/LegalDocuments/procedures/west_bank/113.pdf

Foreign Affairs and Defense held on 13 January 2016, and in the State response to a petition heard by the High Court of Justice[4], confirming the intent to destroy humanitarian assistance and forcibly transfer Palestinians en masse.

II. Gaza Strip

7. A particular concern for humanitarian organisations operating in the Gaza Strip is the ongoing obstruction of personnel and humanitarian aid as a result of the blockade and land closure of Gaza, which the Secretary General has described as "a continuing collective penalty against the people of Gaza". [5] Access for humanitarian personnel and materials is entirely controlled by Israel, which results in a myriad of problems, delays and additional costs.

8. Israel enforces restrictions on any items it considers to be "dual use". The list of "dual use" items is remarkably broad and includes items such as wood, water pumps, disinfectants, concrete blocks, thermal insulation material, welding equipment and even X-ray machines.[6] While permission to bring these materials in is sometimes obtained, the process is time-consuming and administratively burdensome, putting it beyond the reach of all but the largest organisations. There have also been notable instances where NGO's have completed the arduous process of applying only to be refused, making completion of the projects impossible without finding some other source for essential materials.

9. Further, NGOs are likely to avoid developing projects which are reliant on the entry of materials whose supply is inconsistent and unreliable. The potential delays which may be incurred through Israeli restrictions can also result in project costs increasing dramatically, adding to the disincentive for donors to invest in such projects.

10. The implementation of the Gaza Reconstruction Mechanism (GRM) has gone some way to alleviate the lack of construction materials, and reconstruction has made progress, however the GRM has had less success for other "dual use" materials – particularly for WASH items – and is too cumbersome for most organisations to use. While any means to bring in more materials is welcome, we must address the root cause.

11. The blockade has not only resulted in chronic aid dependency and brought unemployment rates in Gaza to among the highest in the word,[7] but has also made humanitarian aid increasingly difficult to provide. In the wake of the protracted humanitarian crisis, steps must be taken to ensure that Israel meets its obligations as the Occupying Power to facilitate the flow of aid to the population of Gaza. It is crucial that Israel's "dual use" list be revised to bring it in line with international standards such as those set out in the Wassenaar Arrangement.[8]

III. The Obstruction of Humanitarian Assistance and International Law

12. Article 43 of the Hague Regulations imposes a general duty upon an Occupying Power to provide for the wellbeing of the protected population as a duty of good governance. This in turn forms the basis for the concomitant and secondary duty to accept and facilitate humanitarian

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[4] HCJ 8802/15

[5] A/HRC/28/45, para. 70

[6] Defense Export Control Order (Controlled dual use equipment transferred to areas under Palestinian civil administration) (amendment) 2015

[7] 43.9% in 2014. Economic Monitoring Report to the Ad Hoc Liaison Committee, World Bank (27 May 2015) at p.19 http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/05/27/090224b082eccb31/5_0/Rendered/PDF/Economic0monit0oc0liaison0committee.pdf

[8] The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

relief. As such, Article 59 of the Fourth Geneva Convention provides that when "whole or part of the population of an occupied territory are inadequately supplied, the occupying power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all means at its disposal".

13. All contracting parties must permit the free passage of such humanitarian consignments and guarantee their protection. As such, relief societies and their representatives must be granted "all facilities" in visiting protected persons while the Occupying Power must respect and protect humanitarian workers. Further, the Occupying Power must not divert relief consignments from the purpose for which they are intended and must also "facilitate the rapid distribution" of relief consignments.

14. The obligation of the Occupying Power to accept and facilitate humanitarian relief is tempered by certain control rights, which necessitate certain cooperation between the relief providers and the Occupying Power. Crucially, however, the consent by the occupying power to the provision of relief must not be withheld for arbitrary or capricious reasons.

15. Consent is said to be arbitrarily withheld when, *inter alia*, such withholding or the reasons behind it, violate other obligations of the Occupying Power. For instance, the unlawful and wanton demolition and confiscation of humanitarian assistance; the imposition of an unlawful planning regime; and the harassment, detention or arrest of relief workers would amount to the arbitrary withholding of consent in this context and would amount to an unjustified obstruction of humanitarian assistance.

16. International human rights law is also binding on the Occupying Power. It imposes a positive obligation to protect the right to an adequate standard of living and to ensure the satisfaction of minimum essential levels of, inter alia, housing, food, health and education, to the maximum of its available resources, including resources provided by the humanitarian community through international cooperation and assistance.

IV. Conclusion

17. NRC is alarmed by the systematic denial of, or interference with, international humanitarian assistance to the affected communities, which further exacerbates the hardships experienced by Palestinians and incurs added violations of international law. NRC and its partners have experienced this intentional targeting and obstruction of humanitarian assistance, and hold that this policy is meant to engender a coercive environment characterized by the denial of rudimentary infrastructure and essential services, and which promotes the forcible transfer of Palestinians.

18. If Gaza is to recover, if the rights of the protected population are to be respected and if peace process is to progress, then the unlawful obstruction of humanitarian assistance which condemn the protected Palestinian population to ever-increasing hardships must cease.